

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE REPEAL AND ADOPTION

Agenda # III. B-2

Summary: The Department requests the Board to initiate rulemaking to repeal Title 17, chapter 8, subchapter 7, ARM, Permit, Construction and Operation of Air Contaminant Sources, and to adopt a new subchapter.

List of Affected Rules: Title 17, chapter 8, subchapter 7, ARM.

Affected Parties Summary: The proposed subchapter repeal and new subchapter adoption would affect all parties required to obtain air quality preconstruction permits.

Scope of Proposed Proceeding: The Department requests the Board initiate rulemaking and conduct a public hearing to consider the proposed repeal of Title 17, chapter 8, subchapter 7, ARM and the adoption of a new subchapter.

Background: The Department is proposing this repeal and adoption of rules to update the content of the preconstruction permitting process. The federal permitting statutes allow states to implement preconstruction permitting programs for sources emitting regulated air pollutants but do not prescribe the content of such programs. Subchapter 7 was the Department's original approach to regulating sources of air pollution, and it contains numerous amendments, additions, and incorporations. These revisions have created an arrangement of the text that is often difficult to read and comprehend.

The Department is proposing to combine certain existing state rules in the proposed new rules and is proposing to separate the provisions of certain other existing rules. This is intended to place similar subjects together that are now located in separate rules, making the rules easier to read, understand and follow.

Some of the proposed new rules reflect minor editorial revisions from the existing state rules that are not intended to change the meaning of the existing requirements. These revisions are intended to clarify the rules, make the rules more concise and conform the rules to current rule drafting style.

Definitions were consolidated into a single paragraph in **RULE I**. References to "source" were changed to "emitting unit" or "facility," as appropriate. Reference to "stacks" was eliminated as the Department generally regulates stacks as part of an emitting unit. The definition of "construct" or "construction" was revised. The following definitions were deleted: "Lowest Achievable Emission Rate" or "LAER" and "Major emitting facility." The following definitions were added: (a) "Day;" (b) "Emitting unit;" (c) "Facility;" (d) "Install" or "Installation;" (e) ("Modify;" (f) "Montana Air Quality Permit;" (g) "Portable facility;" (h) "Residential, institutional, or commercial;" (i) "Routine;" (j) "Stationary facility" or "stationary emitting unit."

RULE II explains which sources are subject to the requirements of this subchapter. The applicability provisions previously set forth separately in ARM 17.8.704 and 17.8.705 are now combined. The permit is renamed the "Montana Air Quality Permit."

RULE III contains the general exclusions that previously were combined with the applicability provisions in ARM 17.8.705. The following sources were deleted from the list of exemptions and now must obtain a Montana Air Quality Permit if the chapter otherwise applies: (a) food service establishments; (b) sources whose emissions are calculated by BTU heat input, since all sources emitting 25 tpy are subject to permit requirements unless specifically excluded; (c) ventilation systems for animal housing. A provision was added clarifying the use and termination of emergency equipment. Equipment used for routine maintenance, repair, or replacement was included in the list of exemptions.

RULE IV contains the exclusions for de minimis changes that were previously combined with other exclusions and applicability provisions in ARM 17.8.705. ARM 17.8.705(1)(r) provides that conditions in the permit establishing emission limits, or production limits in lieu of emission limits, may be changed or added if the owner or operator requested such change. In order to avoid the unintended effect of appeal provisions attendant to permit revision, the provision has been changed to allow the Department to change permit conditions if the owner or operator agrees to such changes or additions.

RULE V clarifies that the Department is not responsible for issuing permits or compensating those acting on their own before Department permit review is complete. The Department is given discretion to waive or shorten application filing time. A new provision clarifies certification of completeness and accuracy. Another provision clarifies what is included in the description of a shakedown procedure. Requirements for submitting "post application" information is deleted. A new provision reiterates statutory confidentiality provisions.

RULE VI contains provisions from old subsections ARM 17.8.710 and 730. The provision giving the Department the discretion to prohibit facility operation in the event of permit noncompliance has been moved to RULE IX. Another provision, setting forth the process for permit denial, previously set forth at ARM 17.8.730, has been consolidated into this RULE VI. The consolidated subsection contains revisions clarifying the denial process. RULE VI also sets forth provisions for identifying federally enforceable and state-only conditions in a permit.

RULE VII sets out emission control requirements and subjects to BACT requirements previously unpermitted, older units that construct or modify.

RULE VIII enables a facility and the Department to agree to a location for permit storage that facilitates accessibility.

RULE IX ensures the Department has the authority to halt construction of those units that are out of permit compliance.

RULE X clarifies the procedure for Department review of applications. The provisions incorporate the intent of the statute, ensuring that the application review period does not begin until a complete application is received.

RULE XI contains requirements that remain substantively unchanged.

RULE XII makes it possible to revoke only portions of a permit. The basis for revocation is clarified.

RULE XIII provides for permit revocation upon an owner/operator's request.

RULE XIV addresses revisions to an already existing permit. The term "modify" has been changed to "amend" for clarity. A new section has been added to allow revisions for administrative errors made in drafting the permit.

RULE XV clarifies that denial of transfer must be related to air quality laws.

RULE XVI contains the incorporation by reference and has been moved from the beginning of the subchapter

RULE XVII is the unchanged version of the incinerator rule currently found at ARM 17.8.706(5).

Hearing Information: The Department recommends the Board appoint a hearings officer and conduct a public hearing to take comment on the proposed amendments.

Board Options: The Board may:

1. Authorize the Department to initiate rulemaking and issue the attached Notice of Proposed Amendment and Repeal of Rules;
2. Modify the Notice and initiate rulemaking thereafter; or
3. Determine that the amendment and repeal of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking, appoint a hearings officer, and conduct a hearing as described in the MAR notice.